

## **DETAILED ACTION**

1. Amendments and arguments dated 2/21/2008 have been received.

Claims 1, 4, 6, 9, and 16 are now pending.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 4, 6, 9, 16, and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Re Claims 1, 4, 19: Claim 1 includes “a method for automatically providing presentation options during an online exam.” A process must be tied to another statutory class or transform underlying subject matter to a different state or thing in order to be 35 U.S.C. 101 statutory. Claim 1 discloses a list of steps to be performed but is not tied to any other statutory class of invention such as a particular apparatus. Additionally, there is no physical transformation of subject matter performed by the method steps. Claims 4 and 19 do not resolve the deficiencies of claim 1.

Re Claims 6, 9, 16: Claim 6 includes the preamble “An apparatus for automatically providing presentation options during an on-line exam, said apparatus configured to:”, followed by a series of method steps. Applicant has failed to recite any elements of the alleged apparatus, instead apparently disclosing functions that the apparatus is supposed to perform. Claims are to be drawn to a single statutory class of invention. It appears as though the Applicant is claiming an apparatus described solely by its function.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 1, 4, 6, 9, 16, and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Re Claims 1, 6, 16: Claim 1 includes the limitation “to determine if a timeframe for answering each of the adjusted questions was appropriate and an effectiveness of the presentation option selected by the student; and, modifying the presentation options based at least in part upon the data relating to use of the presentation options” in lines 29-33. The specification does not disclose these limitations. Claim 1 additionally includes the limitation of “wherein the presentation options relate to the particular grade level” in lines 3-4. This limitation is not supported by the specification. Claims 6 (lines 16-17, 34-37) and 16 (lines 1-3) include similar limitations. Claims 4 and 9 are rejected as being dependent on claims 1 and 6.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 6, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw et al. (US Patent No. 5,565,316) in view of Sanda (US Patent No. 6,871,043), Corder (US Patent No. 5,387,104), Knutson (US Patent No. 7,050,753), Clark et al. (US Patent Application Publication 2004/0110118), and Whitehurst et al. (US Patent No. 6,978,115).

Re Claims 1, 19: Kershaw et al. disclose a method for providing an online exam comprising receiving an online exam (Col. 10, Line 45-Col. 11, Line 2) having a plurality of questions (Col. 674, Lines 64-67) based on a particular subject and a particular grade level (Col. 1, Lines 13-26), presenting the questions to a student via an electronic display (Col. 675, Line 6-9), and receiving answers to the questions and storing the answers (Col. 675, Lines 10-11). Kershaw et al. disclose that display options such as time remaining can be displayed and optionally turned off by the student during the online exam by a selection of the presentation option (Fig. 41, No. 2261; Col. 31, Lines 33-40). Kershaw et al. additionally disclose receiving profile information based upon a particular student, the profile providing information to result in scripts being run for special conditions (Fig. 49, No. 426; Col. 41, Lines 27-36; Col. 28, Line 64-Col. 29, Line 1).

However, Kershaw et al. do not specifically disclose presentation options in an online profile based upon an individual educational plan.

Sanda discloses selecting presentation options of assistive technologies and adjusting the presented items to conform with the presentation options by using an assistive technology program to create adjusted presented items (Col. 25, Line 36-Col. 28, Line 26).

Corder discloses, as part of an individualized lesson plan, determining an optimal method of cognitive strategy for presenting information to a student including Braille devices, large screens, speech processing, touch screens, voice recording, etc., (Fig. 1; Col. 9, Lines 20-27; Col. 10, Lines 1-46) and storing the optimal cognitive strategy for later retrieval (Col. 13, Lines 24-28).

Knutson discloses obtaining a learning profile as part of an individual education plan based on grade level and converting the learning profile into a learning profile object model or metadata, the object model or metadata incorporating learning proclivities, preferences, attributes, characteristics, etc., of the user (Col. 1-Col. 3; Col. 20, Lines 48-61). The object model and metadata are used to customize the presentation of content (Col. 12, Lines 13-30) so that each student can be taught while maximizing cognitive assimilation (Col. 2, Lines 6-21; Col. 11, Lines 42-46). The system also includes a testing module to test the subjects provided to the user (Col. 16, Lines 65-67). Knutson also teaches that a learning template, which is correlated to learning style of instruction, is continuously and dynamically updated based on factors such as performance on testing (Col. 4, Line 64-Col. 5, Line 5). Knutson discloses that the system will block display of image descriptions which are not specified in the individual education profile, displaying only elements according to the user's profile (Col. 13, Lines 12-54).

Clark et al. disclose an electronic teaching and examination system and method including disabling access to options not permitted for use by the student (Paragraph 28).

Whitehurst et al. disclose compiling data relating to use of instructional strategies and performance of the student in answering the plurality of questions (Col. 15, Lines 51-55; Col. 16, Lines 1-4). Whitehurst et al. also disclose modifying the instructional strategies based at least in part on the data relating to the use of the instructional strategies (Col. 15, Lines 51-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an online profile based upon an individual educational plan to provide presentation options to a student, thus providing the benefit of personalizing the presentation in a way to attend to the documented accessibility needs of the individual student. It would have been obvious to one of ordinary skill in the art at the time the invention was made to block a display of image descriptions, thereby providing only the options that the user is entitled to. It would have been obvious to one of ordinary skill in the art at the time the invention was made to compile data relating the use of the presentation options and the performance of the student and then using the data to modify the presentation options, thereby providing the predictable result of analyzing the effectiveness of the presentation options and utilizing that result to adapt to the effectiveness of the student. Thus it would have been obvious to combine Kershaw with Sanda, Corder, Knutson, Clark et al., and Whitehurst et al. to provide an online test with assistive presentation options based on a profile uniquely based on an education plan for a student, wherein the presentation options are monitored for effectiveness to modify the future options.

Re Claims 6, 16: Kershaw et al. disclose that the method is performed by an apparatus (Abstract).

8. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw et al. (US Patent No. 5,565,316) in view of Sanda (US Patent No. 6,871,043), Corder (US Patent No. 5,387,104), Knutson (US Patent No. 7,050,753), Clark et al. (US Patent Application Publication 2004/0110118), and Whitehurst et al. as applied to claims 1 and 6 above, and further in view of Rogers (*TOEFL CBT Practice Tests*).

Re Claims 4, 9: Kershaw et al., as modified by Sanda, Corder, Kutson, Clark et al., and Whitehurst et al., do not specifically teach providing a practice area for the student to submit answers to practice questions, not part of the online exam, using the presentation options.

Rogers teaches that online tests such as the TOEFL® include practice areas simulating the test questions and format, not part of the online exam (Page 1, “You need only...”; Page 3, “What format does...”).

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a practice area, allowing the student to become familiarized with the exam and practice questions in a way that is not counted for or against the student’s score. As discussed in claim 1 above, questions are presented using a presentation option.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1, 4, 6, and 9 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Corder does not disclose a test examination environment. However, Corder discloses using the assistive technology in evaluation, prescription, instruction, and testing (Col. 2, Lines 56-62). Furthermore, the Examiner contends that it would have been obvious to one of ordinary skill in the art to provide assistive technologies to a student who requires the assistive technology.

Applicant argues that Knutson does not disclose a user profile based on an individual education plan and presentation options. Knutson discloses a learning profile that is based on an

individual education plan. Additionally, profile object models and metadata are made from the profile that includes the student's preferences, attributes, and learning proclivities. The object models and metadata are the same as the Applicant's profile.

Applicant argues that Whitehurst does not disclose an assessment on test questions. Whitehurst discloses assessing the student's performance based on questions while using the technologies. Whitehurst discloses online questions which is exactly what an online exam is. If the Applicant wishes to further define the exam, the claims must be further amended and considered. Moreover, Whitehurst discloses the analysis of questions and instructional strategies, measuring the effectiveness of the presentation. The analysis method is readily applicable to measure the effectiveness of any type of variable with a measurable outcome such as a test.

Applicants argue that Rogers only provides practice questions. However, as discussed in the cited passages, Rogers discloses practice areas during the test itself.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR CHEUNG whose telephone number is (571)270-1349. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. C./  
Examiner, Art Unit 3714

/Scott E. Jones/  
Primary Examiner, Art Unit 3714